

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALTAGRACIA J. PEGUERO,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,  
INC., THE SKLOVER GROUP, INC., and  
FEDERAL INSURANCE COMPANY,

Defendant.

Civil Action No. 05-10995-RCL

**ASSENTED TO MOTION OF FEDERAL INSURANCE COMPANY  
FOR LEAVE TO FILE ADDITIONAL PAPERS IN SUPPORT OF ITS  
MOTION TO DISMISS AND COMPEL ARBITRATION**

Pursuant to Local Rule 7.1(B)(3), the Defendant Federal Insurance Company ("Federal") moves for leave to file the following additional papers in support of its motion to dismiss and compel arbitration:

- Defendant Federal Insurance Company's Reply Memorandum of Law in Further Support of Its Motion to Dismiss and Compel Arbitration (Exhibit A).
- Affidavit of Joanna Ficklin (Exhibit B).

As grounds for this motion, Federal states that consideration of such additional papers will assist the Court in ruling on its dispositive motion.

Counsel to the Plaintiff has assented to this motion.

Dated: Boston, Massachusetts  
July 8, 2005

FEDERAL INSURANCE COMPANY  
By its Attorneys,

RIEMER & BRAUNSTEIN LLP

By: /s/Mark W. Corner  
Mark W. Corner (BBO #550156)  
Three Center Plaza  
Boston, Massachusetts 02108  
(617) 523-9000

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

By: /s/H. Christopher Boehning  
H. Christopher Boehning  
Admitted *Pro Hac Vice*  
1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000

**ASSENTED TO:**

ALTAGRACIA J. PEGUERO  
By her Attorneys,

/s/Kevin Donius  
Kevin Donius, Esquire  
CORCORAN, FITZGERALD  
& HENNESSEY  
500 Granite Avenue  
Milton, Massachusetts 02186  
(617) 696-5700

**CERTIFICATE OF SERVICE**

I, Mark W. Corner hereby certify that on this date, July 8, 2005, I caused to be served the foregoing document, by electronic notice, upon the following counsel of record:

Kevin Donius, Esquire  
Corcoran, FitzGerald & Hennessey  
500 Granite Avenue  
Milton, MA 02186

Allison M. O'Neil, Esquire  
Craig & Macauley, P.C.  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, MA 02210

John F. Farraher, Jr., Esquire  
Greenberg Traurig  
One International Place  
20th Floor  
Boston, MA 02110

/s/Mark W. Corner

Mark W. Corner

901207.1

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALTAGRACIA J. PLAINTIFF,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,  
THE SKLOVER GROUP, INC. and  
FEDERAL INSURANCE COMPANY,

Defendants.

Civil Action No. 05-10995-RCL

**DEFENDANT FEDERAL INSURANCE COMPANY'S REPLY  
MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS  
MOTION TO DISMISS AND COMPEL ARBITRATION**

Defendant Federal Insurance Company ("Federal") respectfully submits this reply memorandum in further support of its motion to dismiss this proceeding and compel arbitration of Plaintiff Altagracia Peguero's ("Plaintiff's") claims.

**INTRODUCTION**

There can be no real dispute that all of Plaintiff's claims belong in arbitration. In her Opposition to Federal's Motion to Dismiss and Compel Arbitration ("Opposition"), Plaintiff concedes that she purchased a Catastrophic Injury and Accidental Disability insurance policy (the "Plan") that was underwritten by Federal. Plaintiff concedes that the plain language of that Plan does not support her effort to recover a \$1.5 million insurance benefit from Federal. Plaintiff concedes that the Plan contains an arbitration provision. And Plaintiff concedes that the Plan's arbitration provision is broad, encompassing the claims asserted by her in this action. Those concessions require that Plaintiff's claims be dismissed (or stayed) in favor of arbitration.

In an effort to avoid that outcome and arbitration of her claims, Plaintiff now claims that she “never received the policy or a summary of the policy,” that arbitration would be cost-prohibitive, and that the Plan’s arbitration provision is thus unconscionable and unenforceable. (Peguero Aff. at ¶¶ 5-7; Opposition at 5-11.) As we explain below, none of those arguments has a basis in law or fact. None permits Plaintiff to avoid arbitration.

### **ARGUMENT**

We respectfully submit that this Court’s inquiry begins and ends with the United States Supreme Court’s decision in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 402-404 (1967). The Court in *Prima Paint* held that claims concerning fraud in the inducement of a contract must be submitted to arbitration under a broad arbitration clause. See *Unionmutual Stock Life Ins. Co. v. Beneficial Life Ins. Co.*, 774 F.2d 524, 528 (1st Cir. 1985) (citing *Prima Paint*’s teaching that “a broad arbitration clause will be held to encompass arbitration of the claim that the contract itself was induced by fraud”).

Under *Prima Paint*, these are the relevant facts, all of which are undisputed: **First**, Plaintiff entered into a contract with Federal. She so alleges in the First Amended Complaint (at paragraph 39), she says in her Opposition (at page 2) that she “purchased the policy,” and she made payments under the contract and continues to make those payments to this day. (See Affidavit of Joanna Ficklin at ¶ 8.) **Second**, the contract contains an arbitration clause that is broad enough to encompass all of Plaintiff’s claims. We so demonstrated in Federal’s opening brief (at pages 2-3, 5-8) and Plaintiff’s Opposition says

nothing to the contrary.<sup>1</sup> *Third*, Plaintiff alleges that the contract was fraudulently induced. The First Amended Complaint alleges repeatedly that Federal and the other defendants misrepresented the terms of the insurance contract through “misleading, unfair and deceptive” materials that “induc[ed] her to purchase” coverage (Amended Cmplt. ¶¶ 6-11, 24-34, 37, 42-47); the first, second, third and fifth causes of action sound in fraud (*id.*); and Plaintiff claims that she detrimentally relied on defendants’ alleged fraudulent misrepresentations, which she claims “induced” her to purchase coverage (*id.*).

To be clear: Federal strongly disputes the *merits* of Plaintiff’s claims. But under *Prima Paint* and its First Circuit progeny — given the undisputed facts — an arbitrator, not this Court, must resolve the merits dispute. *See Large v. Conseco Fin. Servicing Corp.*, 292 F.3d 49, 53-54 (1st Cir. 2002).

**I. PLAINTIFF’S ARGUMENTS PROVIDE HER NO ESCAPE FROM A VALID ARBITRATION CLAUSE, AND THE COURT SHOULD DISMISS THIS ACTION AND COMPEL ARBITRATION**

**A. Plaintiff Cannot Avoid Arbitration By Claiming  
That She Never Received the Benefit Plan Description**

Plaintiff’s ‘no-consent’ and ‘no-waiver’ arguments (Opposition at 5-8) depend on her allegation that she never received the Benefit Plan Description containing the arbitration provision. But long-settled law makes clear that Plaintiff’s allegation must be rejected. Courts long ago recognized the mischief that would follow if litigants could defeat claims that notice was provided by U.S. mail simply by claiming never to have received the mailing. For that reason, the applicable standard concerning receipt — the so-

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<sup>1</sup> See Opening Br. at 3 (quoting the full text of the arbitration provision at issue in this case, as it appears in the Benefit Plan Description that was sent to Plaintiff upon her enrollment in the Plan). The arbitration provision here is clear, legible and plainly identified under the bolded heading “Arbitration.” Further, the substantive terms of the provision, in simple and unmistakable language, provide for the submission of disputes under the Plan to arbitration.

called “mailbox rule” — compels the Court to *presume* that Plaintiff received the Benefit Plan Description once Federal shows evidence of mailing. Here, Federal has clear proof of mailing, set forth in the attached Affidavit of Joanna Ficklin in Support of Federal’s Motion to Dismiss and Compel Arbitration (“HE Affidavit” or “HE Aff.”).<sup>2</sup> The HE Affidavit shows that Plaintiff was sent, and therefore received, the Benefit Plan Description containing the terms and conditions of the Plan, including its arbitration provision.<sup>3</sup> *Hoefs v. CACV of Colo., LLC*, 365 F. Supp. 2d 69, 72-74 (D. Mass. 2005) (holding that plaintiff cannot avoid an arbitration agreement by claiming she never received it in the mail).<sup>4</sup>

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<sup>2</sup> The crux of Plaintiff’s Opposition is that she never received the Benefit Plan Description. Plaintiff did not purchase the Plan directly from Federal, however; instead, she enrolled in a disability benefits program offered by HealthExtras, Inc. (“HealthExtras”) that included insurance coverage under the Plan underwritten by Federal. As a result, HealthExtras sent Plaintiff numerous correspondence, including the Benefit Plan Description containing the arbitration provision at issue here, as explained further in the attached HE Affidavit.

<sup>3</sup> The HE Affidavit, attesting to mailing of the “welcome packet” to Plaintiff, together with the attached exhibits evidencing that mailing and its contents, demonstrate sufficiently that Plaintiff received the Benefit Plan Description. *See Hoefs*, 365 F. Supp. 2d at 72-73 (“the ‘mailbox rule’ is ‘a settled feature of the federal common law’ and ‘provides that the proper and timely mailing of a document raises a rebuttable presumption that the document has been received by the addressee in the usual time.’”) (citations omitted); *see also Narragansett Indian Tribe v. Warwick Sewer Auth.*, 334 F.3d 161, 168 (1st Cir. 2003); *Univ. Emergency Med. Found. v. Rapier Invs., Ltd.*, 197 F.3d 18, 21 (1st Cir. 1999); *Fed. Ins. Co. v. Summers*, 403 F.2d 971, 975 (1st Cir. 1968); *Canty v. Arbella Mut. Ins. Co.*, 1998 WL 72817 (Mass. App. Div. Feb. 13, 1998); *Wengenroth v. Liberty Mut. Ins.*, 1990 WL 305999, at \*2 (Mass. App. Div. Sept. 24, 1991) (finding that an insurance company establishes prima facie evidence of sending notices by producing an affidavit of its agent attesting to the same).

<sup>4</sup> In contrast, the cases on which Plaintiff primarily relies, *Campbell v. Gen. Dynamics Gov’t Sys. Corp.*, 321 F. Supp. 2d 142 (D. Mass. 2004), 407 F.3d 546 (1st Cir. 2005) and *Waters v. Earthlink, Inc.*, 91 Fed. Appx. 697 (1st Cir. 2003), deal with very different fact patterns and were decided under law wholly irrelevant to this case. In *Campbell*, an employer sent notice of a newly implemented arbitration provision, which modified a prior written employment agreement, to his employees by email (in which the actual text of the arbitration clause was not included, but attached as a link). *Id.* at 144. In noting the insufficiency of the e-mail notice, the district court specifically stated that — unlike the present case — the defendant “sent no papers” to its employees informing them of the change. *Id.* at 148. More important, the First Circuit made it clear that the focus was on the employees’ civil rights claims and “assuming ... a valid contract under general principles of Massachusetts law,” decided the case under the



The following facts are undisputed and dispositive of Plaintiff's 'no consent' and 'no waiver' claims: Plaintiff enrolled in the Plan on July 15, 2002. (HE Aff. at ¶ 5, Exs. 1, 2.) From then until now, Plaintiff's recorded address has not changed: 1 Shandon Road, #215, Dorchester Center, MA 02124. (*Id.* at ¶ 7, Exs. 1, 2; Amended Cmplt. ¶ 1.) Everyone who enrolls as an insured under the Plan receives a standard "welcome packet." As did Plaintiff. Upon her enrollment, Plaintiff was sent, via U.S. mail, a "welcome packet" containing, among other things, a "welcome letter," a certificate of insurance and the Benefit Plan Description with the Plan's arbitration provision. (*Id.* at ¶¶ 5-7, Ex. 2.) Records kept in the ordinary course of business confirm that the "welcome packet" was mailed to Plaintiff. (*Id.* at ¶¶ 3-7, Ex. 1.) And since her enrollment, Plaintiff has been sent numerous correspondence, all via U.S. mail to the same address. None of the correspondence has ever been returned as undeliverable for any reason. (*Id.* at ¶¶ 7-9.)

Thus, under the "mailbox rule," Plaintiff had notice of the Plan's arbitration provision through her receipt of the Benefit Plan Description. *See Hoefs*, 365 F. Supp. 2d at 72-74 (crediting testimony that an "arbitration amendment" was mailed to plaintiff in the normal course of business and that no mail sent to plaintiff had been returned).<sup>5</sup>

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guidelines of the Americans with Disabilities Act ("ADA") and 42 U.S.C. § 12212 (concerning agreements to arbitrate under the ADA), neither of which are relevant here.

The *Waters* case is further distinguishable. There, the court found that the agreement containing the arbitration provision appeared only through a link on an internet service provider's website. Finding no evidence that a customer of that provider would have or should have seen the link, the court determined that the plaintiff was not "on notice that he was bound to arbitrate any dispute he might have" with the provider, and therefore he could not have "agreed to arbitrate." 91 Fed. Appx. at 698.

<sup>5</sup> In addition, under general contract law principles, Plaintiff is bound by the Benefit Plan Description, whether or not she chose to read its terms and conditions. A person who accepts a written contract assents to and is bound by its terms, whether or not he or she read the contract or understood it. *Kergald v. Armstrong Transfer Exp. Co.*, 113 N.E. 2d 53, 54 (Mass. 1953); *see also* 35 Mass. Prac., Consumer Law § 1:7 (2d ed. 2005).

In addition, Plaintiff's 'no consent' and 'no waiver' claims fail because Plaintiff's continued enrollment in the Plan and payment of insurance premiums — *up to the present day*, long after her December 2002 accident and Federal's subsequent investigation and payment of her claim — evidences her acknowledgment of a contractual relationship with Federal and her assent to the Plan's terms. *Hoefs*, 365 F. Supp. 2d at 73 (D. Mass. 2005); *see In re Boston Shipyard Corp.*, 866 F.2d 451, 455 (1st Cir. 1989) (explaining the various ways of ratifying a contract); *Mass. Linotyping Corp. v. Fielding*, 314 Mass. 47, 51 (1943) (finding "evidence of plaintiff's ratification" of an insurance contract "by its payment of the premiums on the policy for many years.").

Moreover, Plaintiff cites no authority for the proposition that plaintiffs can invent factual disputes in order to obtain a jury trial by submitting affidavits that deny familiarity with the arbitration provision at issue (Opposition at 8-9). That is because they cannot. Self-serving affidavits containing "hollow, bald assertions that do not approach fraud in the 'making' of the [arbitration agreement]... do not amount to the type of evidence required to call the 'making of the arbitration' agreement into question." *Am. Heritage Life Ins. Co. v. Orr*, 294 F.3d 702, 709-711 (5th Cir. 2002) (citing *Bhatia v. Johnson*, 818 F.2d 418, 421-22 (5th Cir. 1987)); *see also Boulet v. Bangor Secs. Inc.*, 324 F. Supp. 2d 120, 127 (D. Me. 2004) (rejecting plaintiffs' demand for a jury trial regarding whether they agreed to arbitrate due to lack of evidence substantiating their factual allegations).

**B. Federal Will Pay the Costs of Arbitration**

Plaintiff cannot avoid arbitration by complaining about cost because Federal will pay for the total cost of arbitration in this case. *See Mattox v. Decision One Mortgage Co.*, No. CIV.A. 01-10657-GAO, 2002 WL 31121087, at \*3-4 (D. Mass. Sept. 26, 2002)

(finding that defendant's payment of the arbitration costs ends the debate and obligates plaintiff to arbitrate); *Fluehmann v. Assocs. Fin. Servs.*, No. CIV.A. 01-40076-NMG, 2002 WL 500564, at \*9 (D. Mass. Mar. 29, 2002). Moreover, the Supreme Court has rejected precisely the same unsupported assertions that Plaintiff's counsel has placed before the Court, especially in circumstances where, as here, the parties' agreement does not specify the arbitral forum. *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 90 n.6 & 91-92 (2000) (finding that an arbitration provision's "silence on the subject [of cost] is plainly insufficient to render it unenforceable," and rejecting respondent's unsupported assertions that arbitration would be cost prohibitive); see Opening Br. at 3 (quoting the Plan's arbitration provision); *Donius Aff.* at ¶¶ 3-5.

The authority on which Plaintiff relies is inapplicable. (Opposition Br. at 10.) *Shankle v. B-G Maint. Mgmt. of Colo., Inc.*, 163 F.3d 1230, 1232-34 (10th Cir. 1999), found fee-splitting arbitration provisions unenforceable, but in the specific context of employees attempting to vindicate federal anti-discrimination rights against the backdrop of mandatory arbitration agreements they entered into as a condition of continued employment. Here, the Plan's arbitration provision is silent on the issue of fee-splitting and Federal will pay for the arbitration. Nor does Plaintiff seek to vindicate certain anti-discrimination and employee or workplace rights under federal law.<sup>6</sup>

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<sup>6</sup> Similarly, *Perez v. Hospitality Ventures-Denver, LLC*, 245 F. Supp. 2d 1172 (D. Colo. 2003), and *Gourley v. Yellow Transp., LLC*, 178 F. Supp. 2d 1196 (D. Colo. 2001) — *Shankle's* progeny, both from a jurisdiction bound by Tenth Circuit law — dealt with fee-splitting arbitration provisions and employees asserting statutory claims. Thus, they do not bear on the issues presented here.

**C. Arbitration of Plaintiff's Claims Is Not Unconscionable or Unfair**

As demonstrated above, because Plaintiff was sent the Benefit Plan Description and because Federal will pay for the total cost of arbitration, there is no basis to conclude that arbitration would be unconscionable or unfair. To the extent that Plaintiff argues that arbitration provisions in standard form contracts are unenforceable because they result in an involuntary and unconscionable waiver of a person's right to a jury trial (*see* Opposition at 7-9), the law states otherwise.

First Circuit law is clear that an arbitration provision is not unconscionable or unenforceable merely because it is part of a standard form contract. Rather, courts look to “*both* the inequality of bargaining power (and thus the absence of meaningful negotiation over terms) *and* the oppressive nature of the substance of the agreement,” focusing on the latter. *Mattox*, 2002 WL 31121087, at \*4 (finding that arbitration provisions in consumer contracts benefit consumers and enforcing the provision at issue; citing *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 170 F.3d 1, 17-18 (1st Cir. 1999)) (emphasis in original). Moreover, Plaintiff's ‘no waiver’ argument fails because Massachusetts courts have found jury waivers in standard form contracts to be enforceable. *See Chase Commercial Corp. v. Owen*, 588 N.E. 2d 705, 707-09 (Mass. Ct. App. 1992).

**II. THE ARBITRABILITY OF PLAINTIFF'S CLAIMS AGAINST AMERICAN EXPRESS HAS NO BEARING ON THE ARBITRABILITY OF HER CLAIMS AGAINST FEDERAL**

In our opening brief, we demonstrated that all of Plaintiff's claims are arbitrable. Thus, no purpose would be served by staying this action; it should be dismissed as to Federal. (Opening Br. at 7-8.) Plaintiff responds by arguing that her claims against Defendant American Express Company (“American Express”) are not arbitrable. (Opposition at 11-12.) But regardless of whether Plaintiff's claims against American

Express are arbitrable, the Plan's arbitration provision *is* enforceable with respect to her claims against Federal. That is because "federal law *requires* piecemeal resolution when necessary to give effect to an arbitration agreement." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 19-21 (1983) (emphasis in original). "Under the Arbitration Act, an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement." *Id.* at 20; *see New England Energy, Inc. v. Keystone Shipping Co.*, 855 F.2d 1, 6-7 (1st Cir. 1988); *Gonzalez v. GE Group Adm'rs., Inc.*, 321 F. Supp. 2d 165, 171 n.3 (D. Mass. 2004).<sup>7</sup>

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<sup>7</sup> The sole case cited by Plaintiff to support this point is entirely inapposite, concerning injunctive relief granted to officers of a corporation who were not bound individually by the corporation's arbitration agreement with a third-party manufacturer, facts which do not exist here. *See Graham v. Smith*, 292 F. Supp. 2d 153 (D. Me. 2003).

**CONCLUSION**

For the foregoing reasons, Federal is entitled to, and respectfully requests, the entry of an order (1) dismissing this action without prejudice, or, in the alternative, staying the proceeding in favor of arbitration, and (2) compelling Plaintiff to proceed with the arbitration of her claims.

Dated: Boston, Massachusetts  
July 8, 2005

FEDERAL INSURANCE COMPANY  
By its Attorneys,

RIEMER & BRAUNSTEIN LLP

By: /s/Mark W. Corner  
Mark W. Corner (BBO #550156)  
Three Center Plaza  
Boston, Massachusetts 02108  
(617) 523-9000

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

By: /s/H. Christopher Boehning  
H. Christopher Boehning  
Admitted *Pro Hac Vice*  
1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000

**CERTIFICATE OF SERVICE**

I, Mark W. Corner hereby certify that on this date, July 8, 2005, I caused to be served the foregoing document, by electronic notice, upon the following counsel of record:

Kevin Donius, Esquire  
Corcoran, FitzGerald & Hennessey  
500 Granite Avenue  
Milton, MA 02186

Allison M. O'Neil, Esquire  
Craig & Macauley, P.C.  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, MA 02210

John F. Farragher, Jr., Esquire  
Greenberg Traurig  
One International Place  
20th Floor  
Boston, MA 02110

/s/Mark W. Corner  
Mark W. Corner

901204.1

## **EXHIBIT B**



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALTAGRACIA J. PEGUERO.

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,  
THE SKLOVER GROUP, INC. and  
FEDERAL INSURANCE COMPANY.

Defendants.

Civil Action No. 05-10995-RCL

**AFFIDAVIT OF JOANNA FICKLIN IN SUPPORT OF  
DEFENDANT FEDERAL INSURANCE COMPANY'S REPLY  
MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS  
MOTION TO DISMISS AND COMPEL ARBITRATION**

I, Joanna Ficklin, an adult resident of the State of Maryland, aver that I am competent to make this affidavit and state under oath as follows:

1. I am the Director of Supplemental Benefits for HealthExtras, Inc. ("HealthExtras"). HealthExtras contracts with various insurers and other benefit providers to make available affordable supplemental health and disability benefit programs ("Programs") that its clients/marketing partners offer to their members and customers. Examples of these benefits include a catastrophic accidental permanent total disability insurance benefit underwritten by Federal Insurance Company and an emergency accident and sickness medical expense benefit underwritten by Virginia Surety Company, Inc. HealthExtras' services under these Programs primarily consists of issuing fulfillment materials to Program enrollees and the provision of some ongoing customer support services.

2. I submit this Affidavit in support of Defendant Federal Insurance Company's Reply Memorandum of Law in Further Support of its Motion to Dismiss and Compel Arbitration and to place before the Court certain documents that were sent to plaintiff Altagracia J. Peguero.

3. In my capacity as Director of Supplemental Benefits for HealthExtras, I have custody and control over the customer service records maintained by HealthExtras for people who elect to participate in the Programs. Those records are maintained in the ordinary course of business of HealthExtras and the entries in those records are made at, or near, the time of the events that the entries memorialize.

4. I reviewed the customer service records maintained by HealthExtras for Altagracia Peguero and have attached a true and correct copy of the screen prints of those records for Ms. Peguero as Exhibit 1 to this Affidavit.

5. The customer service records maintained by HealthExtras for Ms. Peguero reflect that she applied to enroll in one of the Programs offered through the American Express Company on July 15, 2002. Under the particular Program in which Ms. Peguero enrolled, which included an accidental permanent total disability benefit underwritten by Federal Insurance Company, HealthExtras sent her a new member "Welcome Packet", which included a welcoming letter, a 1-page plan summary, a 22-page benefit plan description detailing the coverages offered by the applicable insurers and an accompanying endorsement for Massachusetts residents. A copy of the Welcome Packet sent to Ms. Peguero at the time she enrolled is attached to this Affidavit as Exhibit 2.

6. When a new member enrolls in a Program, a Welcome Packet is assembled, the enrollee's name and address are verified, and the Welcome Packet is

thereafter delivered to the HealthExtras' mailroom for postage and mailing through the U.S. Postal Service. An entry is made in the member's record reflecting that the Welcome Packet was processed and mailed. In Ms. Peguero's case, our records indicate that her Welcome Packet was processed and mailed on July 16, 2002.

7. The address to which Ms. Peguero's Welcome Packet was mailed was 1 Shandon Rd., #215, Dorchester Center, MA 02124. HealthExtras makes a record entry in its data base if any mailing is returned by the U.S. Postal Service as undeliverable. In Ms. Peguero's case, there is no record that the original mailing sent to her was ever returned to HealthExtras.

8. Ms. Peguero has remained a member of the HealthExtras Program continuously from July 16, 2002 to the present, and has not notified us of a change in her address at any time. Our records further reflect that she is billed monthly for her membership through her American Express Card at the address reflected in paragraph 7 above.

9. Further, there is no indication that Ms. Peguero or anyone representing her has called to change any of her enrollment information or to request any additional information concerning the Program in which she enrolled until an attorney representing her, Kevin Donius, contacted HealthExtras in January 2003. Mr. Donius advised HealthExtras of his representation of Ms. Peguero in relation to an incident that occurred on December 25, 2002, and requested a claim form and information concerning the benefits available under the particular Program in which she was enrolled. A second copy of Ms. Peguero's Welcome Package was then processed and sent on January 13, 2003 to Mr. Donius at the address he provided us.


I hereby affirm, under the penalties of perjury that the contents of the foregoing Affidavit are true and correct to the best of my knowledge, information and belief.

Dated: July 7, 2005

  
JOANNA FICKLIN

STATE OF MARYLAND            )  
  ) ss.  
COUNTY OF MONTGOMERY    )

Sworn and subscribed to before me this 7th day of July, 2005.

  
Diana D. White  
Notary Public, State of Maryland  
My commission expires June 1, 2008.

# **EXHIBIT 1**

## CUSTOMER UPDATE

HE027BO

6/15/04  
 17:07:30  
 Cust Id: 1751960 Account Stat: E Last Chg: ENLIST On: 7/11/2002  
 Clr Gndr: Contact Code: D Orig. Crt: BGOREN2 On: 7/11/2002  
 LastName: PEGUERO F: ATLACRACIA Mid Init: DOB: 02/20/1961  
 Spouse: F: Mid Init: DOB:  
 Street1: 1 SHANDON RD. #215 Billing Status: CURRENT  
 Street2: Last Bill Date: 5/26/2004  
 City: DORCHESTER CENTER State: MA Zip: 02124 - 1501  
 Phone(H): 617-265-6780 Phone(W):  
 Email-id:

ProdCode: EQ15 Client: AMEX2 Marketing code: K08 30 Day:  
 A/Q/M: M Pay Method: 1 CCNo: CC Type: Exp.Dt:  
 ABA code: DDA Acct#: AcctTyp:

Cust ref: 888404101389535 Cust.Svc: Paid Thru: 6/30/2004  
 Enrldate: 8/01/2002 Pay Due Date: Balance Due: .00  
 Term. Date: Next Bill Date: 6/22/2004 Billed Thru Date: 6/30/2004  
 Enter=Update F3=Exit F4=Prompt F7=History F9=Notes F10=Actions  
 F11=Dependents F12=Cancel F14=Cvg hist F15=Addl Enr F17=Benefits F18=SB Empls  
 F19=UNUM Qstn F20=Term

EXHIBIT 1

6/15/04

## CUSTOMER UPDATE

HE027BO

17:07:30

Cust Id: 1731200 Account Stat: E Last Chg: ENLIST On: 7/15/2002  
 Ctr Gndr: Contact Code: D Orig. Crt: BGOFFEN2 On: 7/11/2002  
 LastName: PEQUERO F: ATLAGRACIA Mid Init: DOB: 6/20/1961  
 Spouse: F: Mid Init: DOB:

\*\*\*\*\*

\* 1=Select C=Change D=Delete Enter=Accept F3=Exit F12=Cancel \*

\* Position To Product code: E015 \*

\* Position To Fulfill code: \*

\* \*

\* Fulfillment Action Requested Processed \*

\* P A - E015 WEL. PKG.-1.5 MILL DISABILITY 7/15/2002 7/16/2002 \*

\* P C4-- E015-AD&amp;D Claim Form Request 1/09/2003 1/10/2003 \*

\* A - E015 WEL. PKG.-1.5 MILL DISABILITY 0700/0000 0700/0000 \*

\* AA- E015 AMEX SPECIAL BILL LTR (ANNUAL) 0700/0000 0700/0000 \*

\* AB- E015 AMEX SPECIAL BILL LTR (MONTHLY) 0700/0000 0700/0000 \*

\* B - E015 2nd Request - Welcome Package 0700/0000 0700/0000 \*

\* C - E015 Misspelled Name - New Certificate 0700/0000 0700/0000 \*

\* CM -E015 -Welcome Packet Certified Mail 0700/0000 0700/0000 + \*

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EXHIBIT 1

HE024BO Cust 1761960 Last Name PEGUERO First Name ATLAGRACIA  
 Bal Due .00 S LastName S First Name  
 ProdCd 8010 Client AMEX2 Cycle M Pay 1 Status E CURRENT Paid Thru 6/30/2004  
 Opt 2 = Disp Det Opt 7 = Adjust New Billing Transactions Since 06/01/2004  
 Sts Sbm Pay Due Lst Sbm Coverage Coverage Bill Recv Refnd Due  
 Opt No Date Date From To Amnt Amnt Amnt Amnt  
 E 000 8/01/02 6/30/04 297.85 297.85 .00 .00

Opt 2 = Display Detail Old Billing Transactions Prior to 06/01/2004  
 Submit Bill Resp Rec Trn Bill Recv Sb Bil  
 Opt Date Month Date No Typ Amnt Amnt Authorization Code No Dpt  
 5/26/04 JUN-04 05/26 SM01 S 12.95 12.95 A100-APPROVED 1 A  
 4/22/04 MAY-04 04/22 SM01 S 12.95 12.95 A100-APPROVED 1 A  
 3/22/04 APR-04 03/22 SM01 S 12.95 12.95 A100-APPROVED 1 A  
 2/23/04 MAR-04 02/23 SM01 S 12.95 12.95 A100-APPROVED 1 +  
 F3=Exit F11=Unfold F12=Cancel F19=XOld F20=XNew



6/15/04  
17:10:10Expanded Old Billing Transactions  
OLD BILLING TRANSACTIONS PRIOR TO 06/01/2004HE024XOLBO  
BGOREN2

Submit Date	Bill Month	Resp Date	Rec No	Trn Typ	Bill Amnt	Recv Amnt	Authorization Code	Sb No	Bil Dpt
5/26/04	JUN-04	05/26	SM01	S	12.95	12.95	A100-APPROVED		A
4/22/04	MAY-04	04/22	SM01	S	12.95	12.95	A100-APPROVED		A
3/22/04	APR-04	03/22	SM01	S	12.95	12.95	A100-APPROVED		A
2/23/04	MAR-04	02/23	SM01	S	12.95	12.95	A100-APPROVED		A
1/22/04	FEB-04	01/22	SM01	S	12.95	12.95	A100-APPROVED		A
12/23/03	JAN-04	12/23	SM01	S	12.95	12.95	A100-APPROVED		A
11/24/03	DEC-03	11/24	SM01	S	12.95	12.95	A100-APPROVED		A
10/23/03	NOV-03	10/23	SM01	S	12.95	12.95	A100-APPROVED		A
9/23/03	OCT-03	09/23	SM01	S	12.95	12.95	A100-APPROVED		A
8/22/03	SEP-03	08/22	SM01	S	12.95	12.95	A100-APPROVED		A
7/23/03	AUG-03	07/23	SM01	S	12.95	12.95	A100-APPROVED		A
6/23/03	JUL-03	06/23	SM01	S	12.95	12.95	A100-APPROVED		A
5/22/03	JUN-03	05/22	SM01	S	12.95	12.95	A100-APPROVED		A
4/24/03	MAY-03	04/24	SM01	S	12.95	12.95	A100-APPROVED		A
3/24/03	APR-03	03/24	SM01	S	12.95	12.95	A100-APPROVED		A
2/24/03	MAR-03	02/24	SM01	S	12.95	12.95	A100-APPROVED		A
1/23/03	FEB-03	01/23	SM01	S	12.95	12.95	A100-APPROVED		A
12/23/02	JAN-03	12/23	SM01	S	12.95	12.95	A100-APPROVED		A

F3=Exit

F11=Unfolds

F12=Cancel

EXHIBIT 1

6/15/04 Expanded Old Billing Transactions HE024XOLBO  
 17:10:10 OLD BILLING TRANSACTIONS PRIOR TO 06/01/2004 BGOREN2

Submit Date	Bill Month	Resp Date	Rec No	Trn Typ	Bill Amnt	Recv Amnt	Authorization Code	Sb No	Bil Dpt
11/25/02	DEC-02	11/25	SM01	S	12.95	12.95	A100-APPROVED		A
10/31/02	NOV-02	10/31	SM01	S	12.95	12.95	A100-APPROVED		A
09/27/02	OCT-02	09/27	SM01	S	12.95	12.95	A100-APPROVED		A
08/26/02	SEP-02	08/26	SM01	S	12.95	12.95	A100-APPROVED		A
07/16/02	AUG-02	07/16	FM01	S	12.95	12.95	A100-APPROVED		A
		00/00							

F3=Exit

F11=Unfolds

F12=Cancel

EXHIBIT 1

6/15/04  
 17:07:30  
 Cust Id: 1741960 Account Stat: E Last Chg: ENLIST On: 7/15/2003  
 Clr Gndr: Contact Code: D Orig. Crt: BOREN2 On: 7/11/2003  
 LastName: PEQUERO F: ATLAGRACIA Mid Init: DOB: 6/22/1961  
 Spouse: F: Mid Init: DOB:  
 Street1: 1 SHANDON RD. #215 Billing Status: CURRENT  
 Street2: Last Bill Date: 5/26/2004  
 City: BOSTON CENTER State: MA Zip: 02124 - 1561

\*\*\* NOTES \*\*\* 1=Create 2=View Expanded Note F12=Cancel

Date	UserID	Description
6/11/2003	RDUVALL	View Only
***CLAIM FILE CREATED***		
1/24/2003	KKEENETH	User-typed notes
		ATTORNEY CALLING AND TRANS TO BARBARA
1/22/2003	LCARROLL	View Only
1/16/2003	VDARDEN	User-typed notes

6/15/04 17:11:54

UPDATE EXPANDED NOTES

Pgm: HEO2980

Document Id. . . . .: 1731960  
User Name. . . . .: PEGUERO  
Project Name. . . . .: ATLACRACIA  
Description. . . . .: View Only

Date. . . . .: 9/11/2003  
User Id. . . . .: BDUVALI

### Expanded Notes

\*\*\*\*\*MAM FILE CREATED\*\*\*\*\*

F3=Exit F12=Cancel

12/24/04 17:11:00

UPDATE EXPANDED NOTES

Prim: HB02980

Case Name: . . . : E51660 Date: . . . : 12/24/2003  
Last Name: . . . : PEGUERO Userid: . . : KKEENETH  
First Name: . . . : ATLAGRACIA  
Description: . . . : User-typed notes

### Expanded Notes

ATTORNEY CALLING AND TRANS TO BARBARA

F3=Exit F12=Cancel

EXHIBIT 1

6/15/2004 17:12:08

UPDATE EXPANDED NOTES

Pgm: HE02980

Case Name: ID. . . . . : 1731960  
Last Name: . . . . . : PEGUERO  
First Name: . . . . . : ATLAGEACIA  
Description: . . . . . : View Only

Date: . . . . . : 6/22/2003  
User ID: . . . . . : LCARROLL

### Expanded Notes

F3=Exit F12=Cancel

07/16/2004 17:11:15

UPDATE EXPANDED NOTES

Page: HEQUERO

Matrimes Id.	1741960	Date	1/16/2003
Last name	PEQUERO	Unit Id.	VDARDE
First name	ATLAGRACIA		
Description	User-typed notes		

Expanded Notes

F3=Exit F12=Cancel

EXHIBIT 1

6/15/04

## CUSTOMER UPDATE

HE027BO

17:07:30

Cust Id: 1781960 Account Stat: E Last Chg: ENLIST On: 6/15/2003  
 Ctr Gndr: Contact Code: D Orig. Crt: PGORENE On: 7/11/2003  
 LastName: DEQUENO F: ATLAGRACIA Mid Init: DOB: 07/20/1961  
 Spouse: F: Mid Init: DOB:  
 Street1: 1 SHANDON RD. #215 Billing Status: CURRENT  
 Street2: Last Bill Date: 5/25/2004  
 City: DORCHESTER CENTER State: MA Zip: 02124 - 1561

## \*\*\* NOTES \*\*\*

1=Create 2=View Expanded Note

F12=Cancel

Date	UserID	Description
1/16/2003	BDOVALL	User-typed notes
1/16/2003	VDARDEN	I SPOKE W/ATTRNY KEVIN AND ADVD FLN DESCRPTN AND C
1/16/2003	VDARDEN	User-typed notes
1/16/2003	VDARDEN	KEVIN CALLED/TRANSFERRED TO BARR
1/13/2003	BDOVALL	View Only
1/13/2003	BDOVALL	PRINT TELEPHONE LOG/PROGRAM SUMMARY
1/13/2003	BDOVALL	Member Services Letter Sent
1/13/2003	BDOVALL	AD&D (INJURY) CLAIM FORMS SNT TO KEVIN DONTUSZATTRNY

EXHIBIT 1



6/11/04 17:12:27

UPDATE EXPANDED NOTES

Pgm: HEO29RC

Customer Id. . . . . : 1731960 Date. . . . . : 1/16/2003  
Card number. . . . . : PEGUERO Modified. . . . . : RDOVALL  
Print name. . . . . : ATLAGRACIA  
Description. . . . . : User-typed notes

Expanded Notes

1. BEFORE W/ATTORNY KEVIN AND ADVD PLM DESCRPTN AND CLAIM FORM WS SNT ON 1/13TH

F3=Exit F12=Cancel

EXHIBIT 1

01/16/2003 17:12:38

UPDATE EXPANDED NOTES

Form: HEO2.DRC

Document Id. . . . .	1731960	Date. . . . .	1/16/2003
First Name. . . . .	PEGUERO	User Id. . . . .	VDARDEN
Last Name. . . . .	ATLAGRACIA		
Description. . . . .	User-typed notes		

Expanded Notes

ZEVIH CALLED/TRANSFERRED TO BARR

F3=Exit F12=Cancel

6/1/2004 17:12:47

UPDATE EXPANDED NOTES

Num: HEO2980

Department Id. . . . . : 1731960  
Last Name . . . . . : PEGUERO  
First Name . . . . . : ATLAGRACIA  
Description . . . . . : View Only

Date. . . . . : 1/13/2003  
User Id. . . . . : BFOUALL

Expanded Notes

PRINT TELEPHONE LOG/PROGRAM SUMMARY

F3=Exit F12=Cancel

EXHIBIT 1

07/13/04 11:11:53

UPDATE EXPANDED NOTES

Form: HE029RC

Case number: 04. . . . . : 1731460 Date. . . . . : 1/13/2003  
Last name: . . . . . : PEGUERO Userid. . . . . : BDUVALL  
First name: . . . . . : ATLAGRACIA  
Description: . . . . . : Member Service Letter Sent

Expanded Notes

ADJUTANT CLAIM FORMS SENT TO KEVIN DONLUG/ATTORNEY/BAGLEY&BAGLEY; PLN DESCRIPTION INCLUDED

F3=Exit F12=Cancel

6/15/04  
 17:07:30  
 Cust Id: 1141000 Account Stat: E Last Chg: ENLIST On: 7/15/2003  
 Clr Gndr: Contact Code: E Orig. Crt: PGORENE On: 7/11/2003  
 LastName: HEGUERO F: ATLAGRACIA Mid Init: DOB: 07/20/1961  
 Spouse: F: Mid Init: DOB:  
 Street1: 1 CHANDON RD. #215 Billing Status: CURRENT  
 Street2: Last Bill Date: 5/26/2004  
 City: DORCHESTER CENTER State: MA Zip: 02124 - 1561

\*\*\* NOTES \*\*\* 1=Create 2=View Expanded Note F12=Cancel

Date	UserID	Description
1/09/2003	BDOVALL	User-typed notes
1/09/2003	BDOVALL	SND CLAIM FORMS AND PLN DESCRPTN TO ATTRNY
1/09/2003	BDOVALL	* Fulfillment Item Added
1/09/2003	BDOVALL	C4-- EOTS-AD&D Claim Form Request REQUES
1/09/2003	BDOVALL	User-typed notes
1/08/2003	NTANTUM	PER LETTER RECVD BY ATTRNY; KEVIN DONIUS-MMBR LOST
1/08/2003	NTANTUM	User-typed notes
1/08/2003	NTANTUM	SEE NOTES

6/15/04 17:13:08

UPDATE EXPANDED NOTES

File: HEQ1990

Customer Id. . . . . : 1731960 Date. . . . . : 1/09/2003  
Last Name. . . . . : PEGUERO Gender. . . . . : BRUVAL  
First Name. . . . . : ATLACRACIA  
Description. . . . . : User-typed notes

Expanded Notes

SEE CLAIM FORMS AND PLN DESCRPTN TO ATTRNY

F3=Exit F12=Cancel

EXHIBIT 1

07/07/04 17:13:13

UPDATE EXPANDED NOTES

Form: HE02980

Customer Id. . . . . : 1731960 Date. . . . . : 1/09/2003  
Last Name. . . . . : PEGUERO Email. . . . . : BDOVATE  
First Name. . . . . : ATLAGRACIA  
Description. . . . . : 5 Fulfillment Item Added

Expanded Notes

4-- Full-Add Claim Form Request REQUEST-20030109 PROCESS-00000000

F3=Exit F12=Cancel

07/11/04 14:11:27

UPDATE EXPANDED NOTES

From: HEQUERO

Identification #: 1731960  
 Last Name: PEGUERO  
 First Name: ATLACRACIA  
 Description: User-typed notes

Date: 1/09/2003  
 UserId: BDUVAL

## Expanded Notes

SEE LETTER RECD BY ATRRNY; KEVIN DONIUS-MMBR LOST RIGHT ARM IN MOTOR VEHICLE  
 ACCIDENT ON 12/15/02; NOTES: DO NOT ATTEMPT TO CONTACT MMBR/SND ALL CORRESPONDENCE  
 TO HIM.  
 RAZED TOTAL DISABILITY DEF TO ATRRNY PER REQST

F3=Exit F12=Cancel

EXHIBIT 1



6/15/04 17:13:38

UPDATE EXPANDED NOTES

Pgm: HEOIDPRC

Client Id. . . . . : 1741000 Date. . . . . : 1/08/2004  
Client Name . . . . . : PEGUERO User Id. . . . . : NTANTOM  
Client Name . . . . . : ATLAGRACIA  
Description . . . . . : User Typed notes

Expanded Notes

SEE HISTORY

F3=Exit F12=Cancel

EXHIBIT 1

6/15/04

## CUSTOMER UPDATE

HE027BO

17:07:30

Cust Id: 1741600 Account Stat: E Last Chg: ENLIST On: 7/15/2002  
 Ctr Gndr: Contact Code: D Orig. Crt: BGORENZ On: 7/11/2002  
 LastName: PEGUERO F: ATLAGRACIA Mid Init: DOB: 6/10/1961  
 Spouse: F: Mid Init: DOB:  
 Street1: 1 CHANLON RD, WETZ Billing Status: CURRENT  
 Street2: Last Bill Date: 5/26/2004  
 City: DORCHESTER CENTER State: MA Zip: 02124 - 1561

## \*\*\* NOTES \*\*\*

1=Create 2=View Expanded Note

F12=Cancel

Date	UserID	Description
1/03/2003	NTANTUM	User-typed notes
		RECEIVED FAX FROM ATTORNEY REGARDING HANDLING CASE
1/07/2003	JVASQUEZ	User-typed notes
		ATTORNEY CALLED TO INFO ABOUT BNFT AMNT FOR ADD
1/06/2003	NTANTUM	User-typed notes
		TTORNEY WILL BE FAXING OVER INFO REGARDING ACCIDE
7/15/2002	ENLIST	* Customer enrolled thru ENLIST

EXHIBIT 1

6/15/04 11:13:49

UPDATE EXPANDED NOTES

Pgm: HEO/PRO

Customer Id. . . . .: 1731960  
Last name . . . . .: PEGUERO  
First name . . . . .: ATLAGRACIA  
Description . . . . .: User-typed notes

Date . . . . .: 1/08/2003  
Userid . . . . .: NTANTUM

Expanded Notes

RECEIVED FAX FROM ATTORNEY REGARDING HANDLING CASE FOR MEMBER. HE IS REQUESTING  
A POLICY SUMMARY TO BE FAXED TO HIM AT 617 241-7839. SENT EMAIL TO BARBARA

F3=Exit F12=Cancel

EXHIBIT 1

07/07/05 17:13:54

UPDATE EXPANDED NOTES

Form: HEO2.980

Customer ID. . . . . : 1731966 Date. . . . . : 1/07/2003  
 First Name. . . . . : PEGUERO User ID. . . . . : JVA3QUEB  
 Phone Number. . . . . : ATTAGRAVIA  
 Description. . . . . : User-Typed Notes

Expanded Notes

ATTORNEY CALLED TO INQ ABOUT BNFT AMNT FOR ADD  
 FOR IF FAXED WAS RCVD ADVCD NO NOTES INDICATE THAT, HE WILL CALL BACK TO FOLLOW  
 UP

F3=Exit F12=Cancel

6/15/04 17:14:06

UPDATE EXPANDED NOTES

Pam: HED2960

Container Id. . . . . : 1731986 Date. . . . . : 1/06/2003  
Inst. Name. . . . . : PEGUERO Userid. . . . . : HPANTON  
File Name. . . . . : ATLAGRACIA  
Description. . . . . : User-typed notes

Expanded Notes

TTOPNEY WILL BE FAXING OVER INFO REGARDING ACUDE

F3=Exit F12=Cancel

EXHIBIT 1

6/15/04 17:14:13

UPDATE EXPANDED NOTES

Pgm: HE029BO

Customer Id. . . . . : 1731960 Date. . . . . : 7/15/2002  
 Last Name. . . . . : PEQUERO Period. . . . . : ENLIST  
 First Name. . . . . : ATLACPAULA  
 Enlistment Date. . . . . : \* Customer enrolled thru ENLIST

Expanded Notes

F3=Exit F12=Cancel

EXHIBIT 1

# **EXHIBIT 2**

Atlagracia Peguero  
1 Shandon Rd. #215  
Dorchester Center, MA 02124

Dear Atlagracia Peguero:

No one likes to think about accidents. But, they can happen to anyone, at any time. That's why your decision to enroll in the Accidental Disability Plan *from American Express*<sup>®</sup> was an exceptionally prudent one.

You've taken an important step toward easily and economically protecting your assets. This plan will pay you a \$1.5 million lump sum benefit in the event that a catastrophic accident leaves you totally and permanently disabled, and unable to work.

Though you probably have health insurance to cover your medical bills, the Accidental Disability Plan *from American Express* offers you coverage for the day-to-day expenses that still require your attention. You can use the money for anything you wish including your mortgage, car payments, utility bills, and groceries, as well as the medical expenses your health insurance may not pay.

Your plan also provides you with the following valuable benefits:

- ▶ **\$1,000 Accidental Death & Dismemberment (AD&D) Benefit** (additional coverage of up to \$100,000 is available with no medical exam or health questions asked – see upgrade form below)
- ▶ **\$2,500 Emergency Accident and Sickness Medical Benefit** provides reimbursement up to \$2,500 per family (\$500 maximum per family member) per year for coinsurance and deductible expenses for medical care received more than 100 miles from home. If you do not have insurance, you are reimbursed up to \$100 per day of medical care to a maximum of \$500 per family member per year.
- ▶ **Medical Care Coordination** is available to assist you in evaluating care options and obtaining appropriate medical treatment at competitive prices in the event you become permanently disabled.

I'm sure you'll find it reassuring to know that these valuable resources are at your disposal should you ever need them. Please see the enclosed Benefit Plan Description for complete details. Now you can enjoy the peace of mind that comes with knowing you've taken an important step to protect yourself and your loved ones. Thank you for enrolling.

Sincerely,



Anne Schepp  
Insurance Officer

P.S. As a valued customer, you can increase your AD&D Benefit, and you are guaranteed to receive the additional coverage - No medical exam is required! Simply complete and return the enrollment form in the enclosed postage-paid envelope or call 1-888-668-9035.

\*\$1.5 Million Accidental Disability Benefit underwritten by Federal Insurance Company; \$2,500 Emergency Accident and Sickness Medical Benefit underwritten by Virginia Surety Company, Inc.

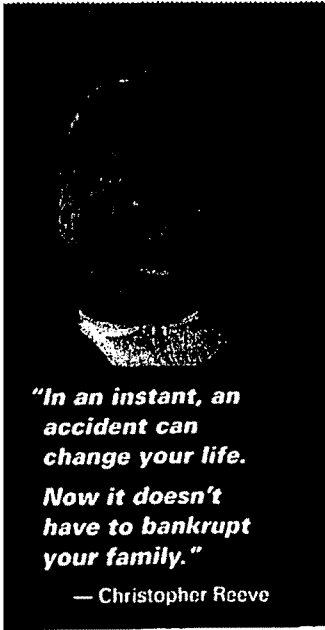


GEN-1201

☒ **Yes!** Please increase my Accidental Death & Dismemberment (AD&D) coverage to \$100,000 for only \$6.95 per month.

**EXHIBIT 2**





☒ **Yes!** Please increase my Accidental Death & Dismemberment (AD&D) coverage to \$100,000 for only \$6.95 per month.

1731960  
Atlagracia Peguero ADU  
1 Shandon Rd. #215  
Dorchester Center, MA 02124

**X** \_\_\_\_\_

Please sign here

**Send no money!** Your increased coverage will be added to your Accidental Disability Plan and will be conveniently billed to your American Express® Card. If you do not wish to increase your coverage, you do not need to return this form.

**THESE ADDITIONAL VALUABLE BENEFITS ARE INCLUDED WITH YOUR PLAN:**

**\$2,500 Emergency Accident & Sickness Medical Expense Benefit** (per family) --- If you, your spouse, or your dependent children are 100 miles or more from your home and suddenly require medical attention as a result of an accident or an illness, we will reimburse you up to \$2,500 (\$500 maximum per family member) per year for co-insurance and/or deductible expenses. If you do not have health insurance, up to \$100 per day of medical care will be paid directly to you instead to a maximum of \$500 per family member per year. Should you use this benefit even once, it could amount to hundreds of dollars in savings.

**Medical Care Coordination Benefit** --- In the event you become permanently disabled, a medical care coordinator will be available to help you evaluate care options and provide guidance and assistance in obtaining appropriate medical treatment.

**IMPORTANT DISCLOSURE:**

Please read carefully. The accidental disability policy provides you with a \$1 million or \$1.5 million benefit (based on your selection) for catastrophic accidental disability situations only and includes an Accidental Death and Dismemberment benefit of up to \$100,000 (based on your selection). **Accidental Permanent Total Disability:** All benefits subject to the terms, conditions, definitions, limitations and exclusions, including pre-existing condition provisions, as set forth in master policy no. 6475 26 11 issued by Federal Insurance Company (Rated "A++" (Superior) by A.M. Best) to Citizens Bank of Rhode Island, as Trustees for G.A.R.D. Trust for the account of HealthExtras/American Express, and as summarized in the American Express Accidental Disability Plan Benefit Plan Description. Written proof of a total permanent disability resulting from an accidental injury which (1) commences within 365 days of the date of the accidental injury, (2) continues without interruption for at least a year from the date the total permanent disability commences, (3) results in the entire and irrecoverable loss of use of both hands or both feet, or one hand and one foot, or the sight of both eyes, or the hearing of both ears, or the ability to speak, and (4) prevents the insured from returning to work must be provided. **\*Must be over age 18 and less than 70 to be eligible.** There is no insurance coverage at age 70 or over. **Exclusions:** This insurance does not cover loss resulting from an insured's emotional trauma, mental or physical illness, disease, pregnancy, childbirth or miscarriage, bacterial or viral infection (except bacterial infection caused by an accident or from accidental consumption of a substance contaminated by bacterial), or bodily malfunctions; suicide, attempted suicide or intentionally self-inflicted injuries; declared or undeclared war. This insurance also does not apply to an accident occurring while an insured is in, entering or exiting any aircraft while acting or training as a pilot or crew member, participating in military service, committing or attempting to commit a criminal act, being intoxicated or under the influence of any narcotic unless taken on the advice of a physician, participating in any professional sport, or participating in parachute jumping from an aircraft. **Pre-existing Condition:** This insurance does not apply to Loss caused by or resulting from an illness, disease or accidental injury of the insured person for which medical advice, diagnosis, care or treatment was recommended or received within 6 months prior to the effective date of coverage. A pre-existing condition will not be excluded after 12 months has elapsed from the effective date of the insured's coverage. **Additional Program Benefits:** A \$2,500 Emergency Accident and Sickness Medical Expense Benefit and a Medical Care Coordination Benefit will be provided in your benefit package. **Other Disclosures:** The \$2,500 Emergency Accident and Sickness Medical Expense Benefit is underwritten by Virginia Surety Company, Inc. (Rated "A+" (Superior) by A.M. Best) under Travel Protection Policy #TPC0137. Insurance offered through The Sklover Group, Inc., 400 Post Avenue, Westbury, NY 11590. **Not a Medicare Supplement.** Program may not be available in all states. Coverage is effective on the first day of the month following receipt of payment from you. Program available through HealthExtras, 2273 Research Boulevard, Rockville, MD 20850. **Annuity Option:** At the time of benefit payment, you may elect an annuity option arranged by HealthExtras. For \$1 million benefit a \$500,000 cash payment plus \$5,000 a month for 20 years, for a total of \$1.7 million, or for \$1.5 million benefit a \$500,000 cash payment plus \$7,500 a month for 20 years, totaling \$2.3 million. Payments made for endorsement. This literature is descriptive only. Actual coverage is subject to the language of the master policy as issued.

Program subject to change. This program may be modified, suspended, cancelled or otherwise terminated with notice.

GEN 1201





## Accidental Disability Plan *from* American Express Plan Summary

**Member Number: 1731960**

**Effective Date: 08/01/2002**

**This Plan Summary is hereby issued to:**

**Atlagracia Peguero  
1 Shandon Rd. #215  
Dorchester Center, MA 02124**

as the Plan Member(s). This certifies that, in return for the Member's application and payment of plan fees when due, the plan will provide to the Member the following benefits, subject to terms and conditions described in the Benefit Plan Description and in the Master Policies noted below:

- ❖ **\$1,500,000 Catastrophic Injury and Accidental Disability Benefit**, underwritten by Federal Insurance Company, a member of the Chubb Group of Insurance Companies, under the Voluntary Accident Insurance Plan Policy 6475 26 11
- ❖ **\$1,000 Accidental Loss of Life Benefit**, underwritten by Federal Insurance Company, a member of the Chubb Group of Insurance Companies, under the Voluntary Accident Insurance Plan Policy 6475 26 11
- ❖ **\$2,500 Emergency Accident and Sickness Medical Expense Benefit**, underwritten by Virginia Surety Company, Inc. under the Travel Protection Policy ITP00137
- ❖ **Medical Care Coordination** is a service available to you under your plan

**For Customer Service, please call:**

**1-888-668-9035**

**Accidental Disability Plan *from* American Express**  
2273 Research Boulevard, 2<sup>nd</sup> Floor • Rockville, MD 20850  
Fax 1-800-963-4434



**American Express Accidental Disability Plan  
Benefit Plan Description**

**FOR MASSACHUSETTS RESIDENTS ONLY**

***Amendatory Endorsement***

In the Contract, Section VII – Common Policy Conditions, the Physical Examination and Autopsy policy condition is deleted in its entirety and replaced with the following:

***Physical Examination***

We have the right to have the **Insured Person** examined by a **Physician** approved by us, as often as reasonably necessary while a claim is pending. Any examinations that we require will be done at our expense.

44-02-1422-MA (Ed. 8/96)

EXHIBIT 2

## Accidental Disability Plan *from American Express*

### Benefit Plan Description

#### Accidental Disability Plan *from American Express*

2273 Research Boulevard, 2<sup>nd</sup> Floor • Rockville, MD 20850  
Customer Service 1-888-668-9035  
Fax 1-800-963-4434

NOTE: Read carefully and keep with your valuable documents



Cards

CARD PTD 15M1A0&D0102

Please read this and, if you enroll, please keep it in a safe place with your other insurance documents. This summary is not a contract of insurance but is simply an informative statement of the principal provisions of the insurance while in effect. Complete provisions pertaining to this plan of insurance are contained in the master policies on file with the policyholder. If this insurance plan does not conform to your state statutes, it will be amended to comply with such laws. If a statement in this booklet and any provision in the policy differ, the policy will govern.

**Plan arranged by**

*The Sklover Group, Inc.*  
490 Post Avenue, Suite 103  
Westbury, NY 11590-2226

**Accidental Disability and Accidental Loss of Life Insurance  
underwritten by**

*Federal Insurance Company*  
A member insurer of the  
*Chubb Group of Insurance Companies*  
15 Mountain View Road, P.O. Box 1615  
Warren, NJ 07061

**\$2,500 Emergency Accident and Sickness Medical Expense Benefit  
underwritten by**

*Virginia Surety Company, Inc.*  
Executive Offices  
123 North Wacker Drive  
Chicago, IL 60606

**Accidental Disability Plan from American Express  
Benefit Plan Description Overview**

Under your plan, you are offered the following benefits:

- ❖ **\$1.5 Million Accidental Disability Plan**  
(Permanent Total Disability Lump Sum Benefit)
- ❖ **Additional Benefits**
  - \$1,000 Accidental Loss of Life (AD&L) Benefit
  - \$2,500 Emergency Accident and Sickness Medical Expense Benefit
  - Medical Care Coordination Benefit

This overview was developed to help you understand your benefits (including the Certificate of Insurance Declarations, the Certificate of Insurance Contract and other sections that follow). Please read carefully.

**SECTION PAGE**

***Certificate of Insurance Declarations*** 1  
Defines Insured Person and lists benefit amounts for your Permanent Total Disability Lump Sum Benefit and your AD&L Benefit.

***Certificate of Insurance Contract*** 4  
Sections I – VII (pages 4-16) contain the major provisions of your Permanent Total Disability Lump Sum and AD&L Benefits. It describes the coverage, definitions, exclusions, limitations and payment should you suffer a loss under this plan.

***\$2,500 Emergency Accident and Sickness Medical Expense Benefit*** 17  
Contains the major provisions of your \$2,500 Emergency Accident and Sickness Medical Expense Benefit. It describes the coverage, definitions, exclusions, limitations and payment terms under this plan.

***Medical Care Coordination Benefit*** 22  
Includes a description of this service.

## Certificate of Insurance Declarations

**Policyholder's Name and Mailing Address**  
Citizens Bank of Rhode Island as Trustee for C.A.R.D. Trust  
for the Account of HealthExtra-American Express  
One Citizens Plaza  
Providence RI 02903-1339

**Policy Number** 9475-26-11  
**Effective Date** August 1, 2000  
**Anniversary Date** August 1  
**Producer Number** 91542  
**Producer** The Sklover Group, Inc.  
409 Post Avenue, Suite 195  
Westbury, NY 11590-2226

### Section I - Policy Period

From August 1, 2000 To: until terminated  
12:01 A.M. standard time at the Policyholder's address shown above

### Section II - Insured Persons

The following are the Insured Persons under this policy:

- | Class | Description   |
|-------|---|
| 1A    | All eligible Accountholders of the Policyholder for whom the elects Individual coverage and pays the required premium   |
| 1B    | All eligible Accountholders of the Policyholder and their spouses for whom the Accountholder elects Individual plus Spouse coverage and pays the required premium |

If a person has coverage for a specific Loss as both an Insured Person and a Primary Insured Person, only one Benefit Amount applicable to that Loss will be paid. If one Benefit Amount is larger, the larger Benefit Amount will be paid and premium for the lesser Benefit Amount will be refunded. If the Benefit Amounts are equal, one Benefit Amount will be paid and premium for the remaining Benefit Amount will be refunded.

### Section III - Hazard(s)

The following are the Hazard(s) for which coverage applies:

**Hazard(s)** 24 Hour Business and Pleasure  
**Form Number** 44-02-100-2 (Ed. 6/96)

### Section IV - Benefit Amounts

The following are Losses covered and subject to the Multiple Losses Maximum Payment provision:

#### A. PERMANENT TOTAL DISABILITY LUMP SUM BENEFIT

Benefit Amount	Elimination Period
\$1,500,000	365 days

#### PERMANENT BENEFIT AMOUNTS

The following are Permanent Total Disability Lump Sum Benefit Amounts

Permanent:	Percent of Loss of Use Benefit Amount
Loss of Use of One Hand and One Foot	100%
Loss of Use of Both Hands or Both Feet	100%
Loss of Sight of Both Eyes	100%
Loss of Hearing of Both Ears	100%
Loss of Speech	100%

#### B. ACCIDENTAL LOSS OF LIFE (AD&D) BENEFIT AMOUNT

The AD&D Benefit Amount and Class are as follows:

Class	Benefit Amounts
1A	\$1,000
1B	\$1,000

#### ACCIDENTAL BENEFIT AMOUNTS

The following are Accidental Loss Benefit Amounts

Accidental:	Percent of AD&D Benefit Amount
Loss of Life	100%
Loss of Speech and Loss of Hearing	100%
Loss of Speech and Loss of One of Hand, Foot or Sight of an Eye	100%
Loss of Hearing and Loss of One of Hand, Foot or Sight of an Eye	100%
Loss of Both Hands, Loss of Both Feet, Loss of Sight of Both Eyes or a Combination of Any Two of a Loss of Hand, a Loss of Foot or Loss of Sight of an Eye	100%
Loss of One Hand, Loss of One Foot or Loss of Sight of an Eye	50%
Loss of Speech or Loss of Hearing	50%
Loss of Thumb and Index Finger of the Same Hand	25%

**DOMESTIC PARTNER**

Whenever the term "spouse" is used in the policy, the term includes **Domestic Partner**. The **Primary Insured Person** and the **Domestic Partner** agree to provide additional information and documentation as may be required to substantiate the relationship and eligibility for coverage under the policy.

**Domestic Partner** Coverage applies.

Coverage only applies for the **Class(es)**, **Hazard(s)**, **Benefit Amounts** and **Losses** that are specifically indicated as covered.

4442-106-114-0-001

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## *Certificate of Insurance*

### *Contract*

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#### READ YOUR CERTIFICATE CAREFULLY.

This certificate contains the major provisions of the policy. It describes the coverage, definitions, exclusions, limitations and payment of loss. This certificate replaces all prior certificates issued to the **Insured Person** for the policy.

Words and phrases that appear in bold print have special meanings and are defined in the Definitions section(s) of this certificate. Defined terms include the plural.

Throughout this certificate the words "you" and "your" refer to the Policyholder shown in the Declarations of the policy. The words "we", "us" and "our" refer to the Company providing this insurance.

#### **Section I – Coverage**

We will pay the applicable **Benefit Amount** if an Accident results in a Loss not otherwise excluded. The Accident must result from a covered Hazard and occur during the policy period. The Loss must occur within one (1) year of the Accident.

##### **Effective Date of Individual Coverage**

Coverage for the **Insured Person** becomes effective on the latest of

- 1) the effective date of the policy; or
- 2) the beginning of the period for which premium is paid for the **Insured Person**; or
- 3) the date on which a person meets the definition of **Insured Person**.

##### **Termination of Individual Coverage**

Coverage for the **Insured Person** automatically terminates on the earliest of

- 1) the termination date of the policy; or
- 2) the expiration of the period for which premium has been paid for the **Insured Person**; or
- 3) the date on which a person no longer meets the definition of **Insured Person**.

#### **Section II – Extensions of Coverage**

Extensions of Coverage are subject to the provisions of Section I of the Contract, Coverage, and all other policy terms and conditions.

##### **Permanent Total Disability Lump Sum**

If **Accidental Bodily Injury** causes the **Primary Insured Person** to have a **Permanent Total Disability** that is continuous during the period for which **Permanent Total Disability Benefit Amounts** are payable, after the **Elimination Period** we will pay the **Permanent Total Disability Lump Sum Benefit Amount** shown in the Declarations.



Whenever the term "Primary Insured Person" is used in the Permanent Total Disability Lump Sum Endorsement, the term includes Covered Person

#### ***Disappearance***

If the Insured Person has not been found within one (1) year of the disappearance, stranding, sinking, wrecking or breakdown of any conveyance in which the Insured Person was covered as an occupant at the time of the Accident, it will be assumed, subject to all other terms of the policy, that the Insured Person has suffered Loss of Life covered under the policy.

#### ***Exposure***

If an Accident resulting from a Hazard causes the Insured Person to be unavoidably exposed to the elements and as a result of such exposure the Insured Person has a Loss, such Loss will be covered under the policy.

#### ***Section III - Multiple Losses Maximum Payment***

For those Losses identified in the Declarations as subject to the Multiple Losses Maximum Payment provision, if an Insured Person has multiple Losses as the result of one Accident, we will pay only the single largest Benefit Amount applicable.

#### ***Section IV - Territory***

This insurance applies worldwide.

#### ***Section V - Exclusions***

Permanent Total Disability coverage does not apply to persons age seventy (70) or older on the date of the Loss

#### ***Aircraft Owned, Leased or Operated***

This insurance does not apply to Loss occurring while an Insured Person is in, entering, or exiting any aircraft owned, leased or operated by the Policyholder or on behalf of the Policyholder.

#### ***Aircraft Pilot or Crew***

This insurance does not apply to Loss occurring while an Insured Person is in an aircraft while acting or training as a pilot or crew member.

This exclusion does not apply to passengers who temporarily perform pilot or crew functions in a life-threatening emergency.

#### ***Criminal Activity***

This insurance does not apply to Loss occurring while the Insured Person is committing a criminal act, or attempting to commit a criminal act.

#### ***Disease or Illness***

This insurance does not apply to Loss caused by or resulting from an Insured Person's emotional trauma, mental or physical illness, disease, pregnancy, childbirth or miscarriage, bacterial or viral infection, or bodily malfunctions.

This exclusion does not apply to Loss resulting from an Insured Person's bacterial infection caused by an Accident or from Accidental consumption of a substance contaminated by bacteria.

#### ***Intoxication and Narcotic Influence***

This insurance does not apply to Loss caused by or resulting from the Insured Person being intoxicated, as defined by the laws of the jurisdiction where the Loss occurred, or under the influence of any narcotic unless taken on the advice of a Physician and used in accordance with the prescription.

#### ***Military Service***

This insurance does not apply to Loss occurring while the Insured Person is participating in military service duties of any state, country, or international authority.

#### ***Parachute Jumping***

This insurance does not apply to Loss caused by or resulting from the Insured Person participating in parachute jumping from an aircraft.

#### ***Pre-Existing Condition***

This insurance does not apply to Loss caused by or resulting from a Pre-Existing Condition. A Pre-Existing Condition means illness, disease or Accidental injury of the Insured Person for which medical advice, diagnosis, care or treatment was recommended or received within the six (6) months prior to the effective date of Insured Person's coverage under this policy. A Pre-Existing Condition will not be excluded after twelve (12) months has elapsed from the effective date of the Insured Person's coverage.

#### ***Professional Sporting Activity***

This insurance does not apply to a Loss caused by or resulting from the Insured Person participating in any professional sporting activity for which the Insured Person received a salary or prize money as a substantial part of their income.

#### ***Suicide or Intentional Injury***

This insurance does not apply to suicide, attempted suicide or loss that is intentionally self-inflicted.

#### ***War***

This insurance does not apply to Loss caused by or resulting from a declared or undeclared War Declared or undeclared War does not include acts of terrorism.

**Section VI – Definitions*****Accident or Accidental***

**Accident or Accidental** means a sudden, unforeseen, and unexpected event which happens by chance, arises from a source external to the **Insured Person**, is independent of illness, disease or other bodily malfunction and is the direct cause of loss.

***Accidental Bodily Injury***

**Accidental Bodily Injury** means bodily injury, which is **Accidental** and the direct cause of a **Loss**.

***Accountholder(s)***

**Accountholder(s)** means a holder, authorized by the Policyholder, of a valid credit card account, bank account, or mortgage with the **Policyholder**.

***Benefit Amount***

**Benefit Amount** is the amount shown in Section IV of the Declarations applicable to the **Loss**.

- 1) at the time of the **Accident**; and
- 2) to the **Insured Person** who has the **Loss**.

***Class***

**Class** means the persons described in Section II of the Declarations, **Insured Persons**.

***Company***

**Company** means Federal Insurance Company.

***Dependent Child or Children***

**Dependent Child or Children** means those children, including adopted children and those children placed for adoption, who are primarily dependent upon the **Insured Person** for maintenance and support, and who are

- 1) under the age of nineteen (19) and reside with the **Insured Person**, or
- 2) beyond the age of nineteen (19), permanently mentally or physically challenged, and incapable of self-support, or
- 3) under the age of twenty-five (25) and classified as full-time students at an institution of higher learning.

***Domestic Partner***

**Domestic Partner** means a person designated in writing at enrollment by the **Primary Insured Person**, who is at least eighteen (18) years of age, and who throughout the past twelve (12) months

- 1) has been in a committed relationship with the **Primary Insured Person**, and
- 2) has been the **Primary Insured Person's** sole spousal equivalent, and

- 3) has resided in the same household as the **Primary Insured Person**, and
- 4) has been jointly responsible with the **Primary Insured Person** for each other's financial obligations,

and who intends to continue the relationship described above indefinitely.

***Elimination Period***

**Elimination Period** means the number of consecutive days of the **Primary Insured Person's Permanent Total Disability** that must elapse before **Permanent Total Disability** benefits become payable. The **Elimination Period** is shown in the Declarations. **Permanent Total Disability** benefits are not payable, nor do they accrue, during an **Elimination Period**.

***Hazard***

**Hazard** means the covered circumstances for which this insurance is provided as stated in Section III of the Declarations and described in the Hazard form.

***Insured Person***

**Insured Person** means a person described as a **Class member** in Section II of the Declarations

- 1) who elects coverage, or
- 2) for whom coverage is elected,

and on whose behalf premium is paid.

***Loss of Use***

**Loss of Use** means the permanent and total inability of the specified body part to function, as determined by a Physician.

The following definitions of **Loss of Use** apply to Section IV.A of the Declarations.  
**PERMANENT TOTAL DISABILITY LUMP SUM BENEFIT:**

***Loss of Use of Hand***

**Loss of Use of Hand** means the **Loss of Use** at or above the knuckle joints of at least four (4) fingers on the same hand or at least three (3) fingers and the thumb of the same hand.

***Loss of Use of Foot***

**Loss of Use of Foot** means the **Loss of Use** of the foot at or above the ankle joint.

***Loss of Sight of Both Eyes***

**Loss of Sight of Both Eyes** means the permanent loss of vision in both eyes. Remaining vision in both eyes must be no better than 20/200 using a corrective aid or device, as determined by a Physician.

*Loss of Hearing of Both Ears*

**Loss of Hearing of Both Ears** means the permanent, irrecoverable and total deafness of both ears to the extent that the deafness cannot be corrected by any aid or device, as determined by a Physician.

*Loss of Speech*

**Loss of Speech** means the permanent, irrecoverable and total loss of the capability of speech without the aid of mechanical devices, as determined by a Physician

*Loss*

**Loss** means the types of **Accidental Bodily Injuries** listed in Section IV of the Declarations for which the policy provides coverage

The following definitions of **Loss** apply to Section IV.B of the Declarations: **AD&D BENEFIT AMOUNTS:**

*Loss of Foot*

**Loss of Foot** means the complete severance through or above the ankle joint. We will consider it a **Loss of Foot** even if the foot is later reattached.

*Loss of Hand*

**Loss of Hand** means complete severance through or above the knuckle joints of at least 4 fingers on the same hand or at least 3 fingers and the thumb on the same hand. We will consider it a **Loss of Hand** even if the fingers and/or thumb are later reattached.

*Loss of Hearing*

**Loss of Hearing** means the permanent, irrecoverable and total deafness of both ears to the extent that the deafness cannot be corrected by any aid or device, as determined by a Physician

*Loss of Life*

**Loss of Life** means death, including clinical death, determined by the local governing medical authorities

*Loss of Sight of an Eye*

**Loss of Sight of an Eye** means the permanent loss of vision in one eye. Remaining vision in that eye must be no better than 20/200 using a corrective aid or device, as determined by a Physician

*Loss of Speech*

**Loss of Speech** means the permanent, irrecoverable and total loss of the capability of speech without the aid of mechanical devices, as determined by a Physician

*Loss of Thumb and Index Finger*

**Loss of Thumb and Index Finger** means complete severance through or above the knuckle joints of the thumb and index finger of the same hand. We will consider it a **Loss of Thumb and Index Finger** even if one or both are later reattached.

*Permanent Total Disability*

**Permanent Total Disability** means **Accidental Bodily Injuries** that solely and directly cause the **Primary Insured Person's**

*Loss of*

Use of One Hand and One Foot; or  
Use of Both Hands or Both Feet; or  
Sight of Both Eyes; or  
Hearing of Both Ears; or  
Speech,

which solely and directly:

- 1) prevent the **Primary Insured Person** from engaging in any gainful occupation for which the **Primary Insured Person** is qualified, or could be qualified, by reason of education, training, experience, or skill; and
- 2) cause a condition which is medically determined by a Physician, approved by the Company, to be of continuous and indefinite duration; and
- 3) require the continuous care of a Physician, unless the **Primary Insured Person** has reached his/her maximum point of recovery.

*Physician*

**Physician** means a person who is licensed as a medical doctor or a doctor of osteopathy under the laws of the jurisdiction in which treatment is given and who is qualified to provide the medical treatment. **Physician** does not include a family member of the **Insured Person**, a social worker or a physical therapist.

*Policyholder*

**Policyholder** means the entity identified in the Insuring Agreement who is responsible for the collection and remittance of premium.

**Primary Insured Person**

**Primary Insured Person** means an **Insured Person** who

- 1) is offered coverage by the **Policyholder** and elects coverage under the policy; and
- 2) pays the premium for the coverage selected.

**War**

**War** means:

- 1) hostilities following a declaration of War by a government authority;
- 2) if there is no declaration of War, then armed, open and continuous hostilities between two countries; or
- 3) armed, open and continuous hostilities between two factions, each in control of territory, or claiming jurisdiction over the site of the area of hostility.

**Section VII – Common Policy Conditions****Absolute Assignment**

The **Insured Person's** rights under the policy may be irrevocably assigned. However, we will only recognize an assignment if the **Insured Person** has given us prior written notice and has our written acknowledgement of this assignment.

**Arbitration**

In the event of a dispute under the policy, either we, the **Insured Person**, or in the event of Loss of Life, the **Insured Person's** beneficiary may make a written demand for arbitration. In that case, we and the **Insured Person**, or in the event of Loss of Life, the **Insured Person's** beneficiary, will each select an arbitrator. The two arbitrators will select a third. If they cannot agree within fifteen (15) days, either we or the **Insured Person**, or in the event of Loss of Life, the **Insured Person's** beneficiary, may request that the choice of arbitrator be submitted to the American Arbitration Association. The arbitration will be held in the state of the **Insured Person's** principal residence.

**Beneficiary**

The Loss of Life benefit will be paid to the beneficiary designated by the **Insured Person**. This choice must be in writing and filed with the **Policyholder**.

If the **Insured Person** has not chosen a beneficiary or if there is no beneficiary alive when the **Insured Person** dies, we will pay the **Benefit Amount** to the first surviving party in the following order:

- 1) the **Insured Person's** spouse;
- 2) in equal shares to the **Insured Person's** surviving children;
- 3) in equal shares to the **Insured Person's** surviving parents;
- 4) in equal shares to the **Insured Person's** surviving brothers and sisters;
- 5) to the **Insured Person's** estate.

All other **Benefit Amounts** are paid to the **Insured Person**, unless otherwise directed by the **Insured Person** or the **Insured Person's** designee.

**Beneficiary Changes**

The **Insured Person**, and no one else, has the right to change the beneficiary. The **Insured Person** does not need the consent of anyone to do so. Changes must be in writing and filed with the **Policyholder**. We do not assume any responsibility for the validity of the changes.

**Cancellation, Nonrenewal and Grace Period**

The **Policyholder** may cancel the policy or any of its individual coverages by sending us written notice stating when cancellation is to take effect. The effective date of cancellation may not be earlier than the date notice is mailed or transmitted.

We may cancel the policy or any of its individual coverages if the **Policyholder** fails to pay the premium within the grace period of thirty-one (31) days after the premium due date, except for the first premium due during the policy term. We will send written notice stating the effective date of cancellation, which will be no earlier than thirty-one (31) days from the premium due date.

The **Policyholder** is entitled to a grace period of thirty-one (31) days for the payment of premium due. The policy will continue in force during the grace period. The grace period does not apply to the first premium payable during the policy term. Failure to pay the first premium on or before the due date will immediately terminate the policy as of inception. We are not required to provide notification of such termination.

We may cancel or nonrenew the policy for reasons other than non-payment of premium by sending written notice at least forty-five (45) days before the Anniversary Date shown in the Insuring Agreement.

We will send notice of cancellation or nonrenewal to the **Policyholder** at its last known address. If the notice is mailed, proof of mailing will be considered proof of cancellation or nonrenewal. The **Policyholder** is required to provide notice of cancellation to all **Insured Persons**.

The **Primary Insured Person** may cancel the insurance described in this policy by returning to us or our authorized representative the **Benefit Plan Description** with a written request for cancellation within ninety days of receipt. The premium will be fully refunded.

**Claim Forms**

When we receive notice of a claim we will send the **Insured Person** or the **Insured Person's** designee, within fifteen (15) days, forms for giving us Proof of Loss. If the **Insured Person** or the **Insured Person's** designee does not receive the forms, the **Insured Person** or the **Insured Person's** designee should send us a written description of the Loss. This written description should include information detailing the occurrence, type and extent of the Loss for which claim is made.

**Claim Notice**

Written Claim Notice must be given to us or any of our appointed agents or brokers within twenty (20) days after the occurrence or commencement of any Loss covered by the policy or as soon as

reasonably possible. Notice must include enough information to identify the **Insured Person** and **Policyholder**. Failure to give Claim Notice within twenty (20) days will not invalidate or reduce any claim if notice is given as soon as reasonably possible.

#### ***Claim Payment***

For benefits payable involving disability, we will pay the **Insured Person** or beneficiary the applicable **Benefit Amount** no less frequently than monthly during the continuance of the period for which we are liable. All payments by us are subject to receipt of written Proof of Loss. For all benefits payable under the policy except those for disability, we will pay the **Insured Person** or beneficiary the applicable **Benefit Amount** within sixty (60) days after we receive a complete Proof of Loss if the **Insured Person** and **Policyholder** have complied with all the terms of the policy.

#### ***Claim Proof of Loss***

For claims involving disability, written Proof of Loss must be given to us within thirty (30) days after commencement of the period for which we are liable. Subsequent written proof of the continuance of such disability must be given to us at such intervals as we may reasonably require.

Failure to give written Proof of Loss within these timeframes will not invalidate or reduce any claim if notice is given as soon as reasonably possible, and in no event, except in cases where the claimant lacks legal capacity, later than one (1) year after the deadline to submit written Proof of Loss.

For all claims except those involving disability, written Proof of Loss must be given to us within ninety (90) days after the date of Loss, or as soon as reasonably possible.

#### ***Claim and Suit Cooperation***

In the event of a claim under the policy, the **Policyholder**, the **Insured Person** and the beneficiary, if applicable, must fully cooperate with us in handling of the claim, including, but not limited to, the timely submission of all medical and other reports, and full cooperation with all physical examinations and autopsies that we may require.

If the **Policyholder** is sued in connection with a claim under the policy, the **Policyholder** will immediately give us copies of every demand, notice and summons which the **Policyholder** receives relating to the suit. The **Policyholder** must fully cooperate with us in the handling of the suit. At our request, the **Policyholder** will assist in the settlement or conduct of the suit. The **Policyholder** or its designee will attend all hearings and trials and assist in giving evidence and securing the attendance of witnesses. The **Policyholder** must not, except at its own expense, voluntarily make any payment or assume any obligation in connection with the suit without our prior written consent.

#### ***Compliance by Policyholder and Insured Person***

We have no duty to provide coverage under the policy unless the **Policyholder** and the **Insured Person** have fully complied with all the terms and conditions of the policy.

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#### ***Conformance With Statutes***

Any terms of the policy which are in conflict with the applicable statutes, laws or regulations of the state or territory in which the policy is issued are amended to conform to such statutes, laws or regulations.

#### ***Conversion Privilege***

In the event the **Insured Person's** coverage under the policy ceases for any reason other than termination of the policy, the **Insured Person** is eligible for an individual accident policy.

To convert to an individual accident policy, the **Insured Person** must submit to us or our authorized representative

- 1) a complete, written application, and
  - 2) the required premium
- for the individual accident policy within thirty-one (31) days after the **Insured Person's** coverage ended.

The individual accident policy will:

- 1) be issued without evidence of insurability;
- 2) provide insurance only for **AD&D** that is most similar to, but not greater than, the terminated coverage;
- 3) not pay for the same Loss for which benefits have already been paid under the policy;
- 4) provide a **Benefit Amount** for the **Insured Person** which will be the lesser of the following:
  - a) the **Insured Person's Benefit Amount** under the policy, or
  - b) \$100,000, and
- 5) be subject to current rates for age and Class at the time of conversion.

#### ***Examination Under Oath***

We have a right to examine under oath, as often as we may reasonably require, the **Insured Person**, the **Policyholder** or the beneficiary. We may also require the **Insured Person**, the **Policyholder** or the beneficiary to provide a signed description of the circumstances surrounding the Loss and their interest in the Loss. The **Insured Person**, the **Policyholder** and the beneficiary will also produce all records and documents requested by us, and will permit us to make copies of such records or documents.

#### ***Inadvertent Error***

The insurance provided under the policy will not be prejudiced by the failure on the part of the **Policyholder** to transmit reports, collect and remit premium or comply with any of the terms and conditions of the policy when such failure is due to inadvertent error or clerical mistake.

#### ***Legal Action Against Us***

No legal action may be brought to recover on the policy until sixty (60) days after we have been given complete, written Proof of Loss. No such action may be brought after three (3) years from the

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time complete, written Proof of Loss is required to be given. No such action may be brought unless there has been full compliance with all of the terms of the policy.

In no case will we be liable for benefits that are not payable under the terms of the policy or that exceed the applicable Benefit Amounts.

#### ***Liberation***

If we adopt any changes

- 1) within forty-five (45) days prior to the effective date shown in the Insuring Agreement, or
- 2) during the policy period.

which could broaden this insurance without an additional premium charge, the Insured Person will automatically receive the benefit of the broadened coverage.

#### ***Physical Examination and Autopsy***

We have the right to have the Insured Person examined by a Physician approved by us, as often as reasonably necessary while a claim is pending. We may also have an autopsy done by a Physician, unless prohibited by law. Any examinations or autopsies that we require will be done at our expense.

#### ***Premium Payment***

The Policyholder will collect and remit to us all premiums due under the policy, subject to the grace period specified in the Cancellation, Nonrenewal and Grace Period condition.

Premium is auditable. We will calculate the earned premium for each audit Reporting Period based on the applicable rates and exposures shown in the Premium Summary. The Policyholder must keep records of the information we need to calculate the premium and send us copies of these records for each Reporting Period.

The earned premium will be computed on a pro-rata basis. Any unearned premium will be remitted to the Policyholder for return to the Primary Insured Person as soon as practicable.

#### ***Premium Rate Changes***

We may change the premium rates for the policy on the Anniversary Date. We will give the Policyholder at least forty-five (45) days prior written notice.

#### ***Statement by Policyholder or Insured Person and Incontestability***

We will not use any statements, except fraudulent misstatements, made by the Policyholder or an Insured Person to void the insurance or reduce benefits payable under the policy, or to otherwise contest the validity of the policy, unless such statements are contained in a written document signed by the Policyholder or the Insured Person. If we rely on such statements for this purpose, we will provide a copy of the written document to the Policyholder, the Insured Person, or the Insured Person's designee or beneficiary, as appropriate.

We will consider all statements made by the Policyholder and the Insured Person to be representations and not warranties.

Except for nonpayment of premium, we will not use statements made by the Policyholder or an Insured Person regarding insurability to contest the validity of the policy when the statements are made more than two (2) years after the policy has been in force during the Insured Person's lifetime.

Nothing in this section will preclude us from asserting at any time defenses based upon a claimant's ineligibility for coverage under the policy, or upon any other policy provision or condition.

#### ***Titles of Paragraph***

The titles of the various paragraphs of this certificate and any endorsements attached are inserted solely for the convenience of reference and do not limit or affect in any way the provisions to which they relate.

#### ***Workers' Compensation***

The benefits payable under the policy are not in lieu of and do not affect any requirement for Workers' Compensation Insurance.

44-00043-104 5/05

#### ***HAZARD***

##### ***24 Hour Business and Pleasure***

24 Hour Business and Pleasure Hazard means all circumstances, subject to the terms and conditions of the policy, to which the Insured Person may be exposed anywhere in the world.

44-00043-104 5/05

## \$2,500 Emergency Accident and Sickness Medical Expense Benefit

### ISSUED BY

Virginia Surety Company, Inc. under the Travel Protection Policy Number HITP00137

### DESCRIPTION OF COVERAGE

#### Schedule of Coverages

Maximum Annual Benefits Per Policy

Emergency Accident and Sickness Medical Expense

Benefit payable with other Insurance

\$500, maximum annual  
benefit per family - \$2,500

Benefit payable without other Insurance

Up to \$100/day, maximum of \$500

### Emergency Accident and Sickness Medical Expense

The Company will pay benefits, up to the maximum shown on the Schedule of Coverages, if as the result of an Accidental Injury or Sickness while on Your Trip, You incur necessary covered medical expenses for Emergency Treatment. Covered medical expenses are necessary services and supplies, which are recommended by the attending Physician. They include the services of a legally qualified physician, charges for Hospital confinement and use of operating rooms; charges for anesthetics (including administration), x-ray examinations or treatments, and laboratory tests; ambulance service; drugs, medicines, prosthetics and therapeutic services and supplies. The Company will not pay benefits in excess of the reasonable and customary charges commonly used by providers of medical care in the locality in which the care is furnished.

### LIMITATIONS AND EXCLUSIONS

The following exclusions apply to Emergency Accident and Sickness Medical Expense coverage. This plan does not cover any loss caused by or resulting from:

- 1) Pre-Existing Conditions, as defined below;
- 2) Suicide or attempted suicide;
- 3) Intentionally self-inflicted injuries;
- 4) War, invasion, acts of foreign enemies, hostilities between nations (whether declared or not), civil war;
- 5) Any loss starting while You are in the service of the armed forces of any country. Orders to active military service for training purposes of two months or less will not constitute service in the armed forces;
- 6) Piloting or learning to pilot or acting as a member of the crew of any aircraft;
- 7) Mental or emotional disorders, unless hospitalized;
- 8) Participation as a professional in athletics or underwater activities;
- 9) Being under the influence of drugs or intoxicants unless prescribed by a Physician;
- 10) Commission or the attempt to commit a criminal act;

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- 11) Participating in bodily contact sports, skydiving, hang gliding, parachuting, mountaineering, any race, bungee cord jumping, or speed contest;
- 12) Denial treatment except as a result of an Accidental Injury to sound, natural teeth within twelve (12) months of the Accidental Injury;
- 13) Any non-emergency treatment or surgery, routine physical examinations, hearing aids, eye glasses or contact lenses;
- 14) Pregnancy and childbirth (except for complications of pregnancy);
- 15) Confinement or treatment in a government Hospital, however, the U.S. government may recover or collect benefits under certain conditions;
- 16) Care of treatment which is not medically necessary;
- 17) Care or treatment for which compensation is payable under Workers' Compensation law, any Occupational Disease law, the 4800 Time B, net fit plan or similar legislation;
- 18) Care or treatment that is payable under any Insurance policy that does not require deductible and/or co-insurance payments by the Eligible Person;
- 19) Injury or Sickness when traveling against the advice of a Physician; and
- 20) Cosmetic surgery except for reconstructive surgery incidental to or following surgery for trauma, or infection or other covered disease of the part of the body reconstructed, or to treat a congenital malformation of a child.

### DEFINITIONS

"Accident" means a sudden, unexpected, unusual, specific event which occurs at an identifiable time and place, but shall also include exposure resulting from a mishap in a conveyance in which You are traveling.

"Accidental Injury" means injury caused by an Accident (of external origin) occurring during a Covered Trip being the direct and independent cause in the loss.

"Eligible Person" means You, Your spouse, and Your unmarried dependent children) who are under 19 years of age (24, if a full-time student). Dependent children include stepchildren, legally adopted or children who have been placed in Your home for adoption, and foster children. If a mental or physical handicap prevents an unmarried dependent child from self-support when he/she reaches the termination age, he/she may remain as an Eligible Person under this policy. Proof of such incapacity and dependency must be furnished to the Company within 31 days of the child's attainment of the termination age and not more frequently than annually thereafter. Coverage will continue as long as coverage remains in force and the dependent child is incapable of self-support.

"Emergency Treatment" means necessary medical treatment, including services and supplies, which must be performed during Your Trip due to the serious and acute nature of the Accidental Injury.

"Hospital" means a facility that:

- a) holds a valid license if it is required by the law;
- b) operates primarily for the care and treatment of sick or injured persons as in-patients;
- c) has a staff of one or more Physicians available at all times;
- d) provides 24-hour nursing service and has at least one registered professional nurse on duty or call;
- e) has organized diagnostic and surgical facilities, either on the premises or in facilities available to the hospital on a pre-arranged basis; and

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- f) is not, except accidentally, a clinic, nursing home, rest home, or convalescent home for the aged, or similar institution.
- "**Individual Coverage Term**" means the period of time beginning when the Eligible Person has been enrolled for coverage under the policy and for whom the required premium has been paid.
- "**Injury**" means bodily injury caused by an Accident occurring while this policy is in force, and resulting directly and independently of all other causes in loss covered by the policy. The Injury must be verified by a Physician.
- "**Insurance**" means any one of the following types of policies or plans which provide benefits for Hospital confinement for You on Your effective date of coverage, and such policy or plan requires You to pay a deductible and/or portion of coinsurance. Individual, group or blanket insurance plans; group Blue Cross, Blue Shield, or other group prepayment coverage plans; coverage under labor management trustee plans, union welfare plans, employer organization plans, employee benefit organizational plans, or other arrangements of benefits for persons of a group. Insurance does not include Medicare or Medicaid.
- "**Physician**" means a licensed practitioner of medical, surgical or dental services acting within the scope of his/her license. The treating Physician may not be You, a Traveling Companion\* or a Family Member\*\*.
- \* Traveling Companion means a person who is sharing travel arrangements with You (to a maximum of four (4) persons including You).
- \*\* Family Member means the Eligible Person's or Traveling Companion's legal or common law spouse, parent, legal guardian, step-parent, grandparent, grandchild, in law, natural or adopted child, step-child, brother, sister, step-brother, step-sister, aunt, uncle, niece or nephew, who reside in the United States or Canada.
- "**Pre-Existing Condition**" means any Injury or Sickness which has been diagnosed by a legally qualified Physician, with consultation, advice or treatment occurring within twelve (12) months immediately prior to an Eligible Person's Individual Coverage Term. Pre-Existing Condition also means symptoms of a condition that would have led an ordinarily prudent person to seek diagnosis, care or treatment. Such an Injury or Sickness will continue to be a Pre-Existing condition until the earlier of:
- the expiration of twelve (12) consecutive months beginning with the Individual Coverage Term, for which the Eligible Person has not received any medical care, consultation, diagnosis or treatment, or has not taken any prescribed drug or medicine on account of such condition, or
  - the expiration of twenty-four (24) consecutive months, beginning with the Individual Coverage Term.
- "**Sickness**" means an illness or disease which is diagnosed or treated by a Physician after the effective date of this plan and while You are covered under this policy.
- "**The Company**" means Virginia Surety Company, Inc.
- "**Trip**" means any trip taken by an Eligible Person, to age 70 only, for which the required premium has been paid and which is 100 or more miles away from the Eligible Person's primary residence (if

a student, the primary residence will be the parents' residence). Travel must be solely for business or for pleasure, not for the procurement of medical treatment or advice.

"**You and Your**" means an Eligible Person.

## GENERAL PROVISIONS

**Legal Actions.** No legal action for a claim can be brought against us until sixty (60) days after we receive proof of loss. No legal action for a claim can be brought against us more than two (2) years after the time required for giving proof of loss.

**Controlling Law.** Any part of this Policy that conflicts with the state law where the Policy is issued is changed to meet the minimum requirements of that law.

**Misrepresentation and Fraud.** Coverage as to an Eligible Person shall be void if, whether before or after a loss, the Eligible Person has concealed or misrepresented any material fact or circumstance concerning this Policy or the subject thereof, or the interest of the Eligible Person therein, or if the Eligible Person commits fraud or false swearing in connection with any of the foregoing.

**Subrogation.** To the extent the Company pays for a loss suffered by an Eligible Person, the Company will take over the rights and remedies the Eligible Person had relating to the loss. This is known as subrogation. The Eligible Person must help the Company to preserve its rights against those responsible for the loss. This may involve signing any papers and taking any other steps the Company may reasonably require. If the Company takes over an Eligible Person's rights, the Eligible Person must sign an appropriate subrogation form supplied by the Company.

**Assignment.** This Policy is not assignable but benefits may be assigned.

**When an Eligible Person's coverage begins.** All coverage will take effect on the first day of the following month in which the required premium has been paid.

**When an Eligible Person's coverage ends.** An Eligible Person's coverage will end on the date which is the earliest of the following:

- the date the Policy is terminated,
- the date on which You no longer meet the definition of "Eligible Person,"
- the date coverage is ended by You, or
- the due date of a premium when due, subject to the Grace Period. The Company will allow a period of 31 days after the premium due date for payment of each premium after the first premium payment. The Policy is in force during this period. Termination of insurance of any Eligible Person will be without prejudice to any claim that begins before the date of termination.

**Notice of Claim.** Written notice of claim must be given to the Company or its designated representative within twenty (20) days after a covered loss first begins or as soon as reasonably possible. Notice should include the Eligible Person's name and Policy number. To obtain claim forms call 1-888-668-9035.

**Proof of Loss.** The Claimant must send the Company, or its designated representative, proof of loss within ninety (90) days after a covered loss occurs or as soon as reasonably possible.



**Payment of Claims.** The Company, or its designated representative, will pay the claim after receipt of acceptable proof of loss. All claims will be paid to the Eligible Person or the Eligible Person's estate. In the event the Eligible Person is a minor, incompetent or otherwise unable to give a valid release, the Company may make arrangements to pay claims to the Eligible Person's legal guardian, committee or other qualified representative.

**Physical Examination and Autopsy.** The Company, or its designated representative, at their own expense, have the right to have the Eligible Person examined as often as reasonably necessary while a claim is pending. The Company, or its designated representative, also has the right to have an autopsy made unless prohibited by law.

**NOTE:** Problems of distance, information and communication make it impossible for Virginia Surety Company, Inc., HealthExtras, or The Sklover Group, Inc. to assume any responsibility for the availability, quality, use or result of any emergency service. In all cases, You are still responsible for obtaining, using and paying for Your own required services of all types.

This insurance, under Policy HTP00137, is underwritten by: Virginia Surety Company, Inc.  
Executive Offices: 123 North Wacker Drive, Chicago, Illinois 60606

Policy terms and conditions are briefly outlined in this Plan Description. Complete provisions pertaining to this insurance are contained in the Master Policy on file with the trustee, Marine Bank, Springfield and HealthExtras. In the event of any conflict between this Plan Description and the Master Policy, the Policy will govern.

## **Medical Care Coordination Benefit**

Should You become permanently disabled, a medical care coordinator will be available to help evaluate care options and provide guidance and assistance in obtaining appropriate medical treatment.

*Please note that the Benefit Plan Description is not the master policy.  
Actual coverage is subject to the language of the master policies issued.*

For Customer Service or to cancel your enrollment in the Plan,  
please call 1-888-668-9035.

*Offer subject to change. This plan may be modified,  
suspended, cancelled or otherwise terminated with notice.*